IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.9372 OF 2004

[From impugned order dated 11.10.2004 passed by His Honour Principal Judge Shri.R.R.Vachha of the Hon'ble City Civil Court at Mumbai]
IN
CHAMBER SUMMONS NO. 998 OF 2004
IN
B.C.C.C.MISC. APPEAL NO.(ST)NO. 31 OF 2004
FROM
[Impugned order dated 18-3-2004 passed by the Court Estate Officer, Air Port Authority of India, Western Region, Mumbai-400099]
IN
E.O.NO.09 of 2002

Blanche Victor Bugree ..Petitioner
(Ori.Appellant)

Vs.

The Senior Manager
(Aerodrome), Airports
Authority of India (NAD)
Juhu Aerodrome, Mumbai and
Ors. ..Respondents
(Ori.Respondents)

....

Mr.Satish P.Nagvekar for Petitioner
Mr.P.K.Samdhani with Mr.Anurag Gokhale with
Ms.Rekha V.Tawade i/b M/s.M.V.Kini & Co. for
Respondent Nos.1 to 3.

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CORAM : B.H.MARLAPALLE,J.
DATE : APRIL 12,2005

P.C.:

1. Heard the learned counsel for the Petitioner and learned counsel for the Respondents.

2. The Petitioner claims that she is the owner of plot of land admeasuring 420 Sq.Mts. from CTS No.

939 (part) and CTS No.940 (Part) of village Juhu, Taluka Andheri and that the same land was an agricultural land. She also claims that City Survey Nos.939 and 940 were old survey No.80 and she came in possession through her maternal grand-father by name Mr.Alex Brass. The Estate Officer, Air Port Authority of India, Western Region initiated the enquiry under Section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short the "E.P.E.Act"), in respect of land admeasuring 420 sq.mts. and in possession of the Petitioner. The enquiry resulted in an order of eviction passed on 18.3.2004. The Petitioner was called upon to vacate the said plot of land within fifteen days of publication of the order, failing which, she was liable to be evicted from the said property.

3. The order passed by the Estate Officer is a subject matter of challenge in an appeal pending before the learned Principal Judge of the City Civil Court at Mumbai and in the said appeal, Chamber Summons No. 998 of 2004 came to be moved seeking amendment to the Appeal Memo. The learned Principal Judge was pleased to dismiss the said Chamber Summons vide his order dated 11.10.2004 and hence, this petition against the said interlocutory order.

4. The main thrust of the arguments advanced by the learned counsel for the Petitioner appears to be that the subject plot of land is not the property of the Air Port Authority of India, it does not have any title over the said property and therefore, the enquiry initiated by the Respondent No.4 under the E.P.E.Act was vitiated and was without any authority in law. On advancement of these arguments, the Petitioner sought amendments to the appeal memo. The learned counsel for the Petitioner submitted that it was the statutory duty of the Estate Officer to record the evidence of the parties and failure to do so, would render the order passed by him, null and void. These submissions are purportedly made on the basis of the scheme of Section 8 of the E.P.E.Act read with Rule 5(2) of the E.P.E.Rules. Section 8 of the E.P.E.Act is the enabling power available to the Estate Officer in respect of summoning and enforcing of any person and examining him on oath; requiring discovery and production of documents; and any other matter which could be prescribed. As per Rule 5(2), the Estate Officer shall record the summary of the evidence tendered before him and the said summary shall form part of the record of the proceedings. It is not the petitioner’s case that at any time, she had submitted application before the Estate Officer wanting to adduce evidence oral or documentary and therefore, for that she had prayed for issuing

summons to witnesses. If the Petitioner had moved such an application before the Estate Officer or if she had placed some evidence more particularly, documentary evidence in the nature of public documents, it was necessary for the Estate Officer to record the summary of evidence or if any witnesses were sought to be called, he could have exercised powers under Section 8 of the E.P.E.Act.

5. Be that as it may, the Petitioner has been consistently taking a plea that the subject plot of land is not a public premises within the meaning of provisions of the E.P.E.Act and even though the Estate Officer has turned down the said plea, the appeal is an extension of the original enquiry and therefore, nothing stops the Petitioner to re-agitate the same issue. It is certainly for the present Respondents to satisfy the lower appellate Court on this point as well. So far as this Court is concerned, the learned counsel for the Respondents has placed on record some evidence which may be a prima facie documentary evidence to show that old survey no.62 and 63(part) and which subsequently came to be numbered as Survey No.80, is the land acquired by the Govt. of India for the Air Port construction. This evidence placed before me, can be considered by the lower Appellate Court and assessed.

6. Under the circumstances, the reasoning set out by the learned Principal Judge in support of the order of rejection of the Chamber Summons cannot be termed as perverse or manifestly erroneous so as to call for interference in a petition under Article 227 of the Constitution of India.

7. The petition is therefore, rejected summarily and it is clarified that all the contentions on merits of the respective parties are left open.

[B.H.MARLAPALLE,J.]